

# ATOZ ALERT

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## Comparability of Investment Funds – Finnish Referral to the Court of Justice of the European Union

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The Finnish Supreme Administrative Court recently published a decision where it proclaimed its decision to refer one of the cases being reviewed to the Court of Justice of the European Union ("CJEU").

This is a very interesting decision, as the case, which is now referred to the CJEU, concerns the comparability of corporate-type investment funds and Finnish (tax-exempt) investment funds.

This case is related to a UCITS fund incorporated as a Luxembourg corporate-type investment fund (SICAV). In general, the case concerns the taxation of a Finnish natural person who has invested in this type of fund. The question referred to the CJEU is whether the income received from this investment fund should be treated as:

- a) if it were received from an entity comparable to Finnish limited liability company (earned income subject to progressive tax rate of up to 50%), or
- b) as if it were received from an entity comparable to Finnish investment fund (investment income subject to tax at flat rate of 30%/34%).

The question referred to the CJEU is whether the TFEU Articles 63 and 65 prevent the current Finnish interpretation i.e. a) above. This interpretation is based on the fact that the legal form of the SICAV does not correspond to the legal form of a Finnish investment fund (as Finnish investment funds are always contractual based funds).

Although the case at hand involves a Finnish individual's taxation, it will be relevant for the cases pending at the Finnish courts related to withholding tax applied to foreign investment funds.

Depending on how the CJEU phrases its decision on this question, it could impact the foreign investment fund withholding cases pending before the Finnish court system and even cases in other jurisdictions. It should be noted that the factual comparison of funds in this area is normally a matter for the local courts, so the CJEU decision may be limited in scope.

It will be interesting to see the CJEU's response. We will watch this space.

## Can we help? Do you have further questions?



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